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CLEAN WATER ACTION

June 19, 1998

Rick Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: Comments on the Draft Programmatic EIS/EIR

Dear Mr. Breitenbach,

Thank you for the opportunity to review and comment on the Draft Programmatic EIS/EIR for the CALFED Bay-Delta Program, on behalf of Clean Water Action. The comments which follow pertain to the Water Quality component of the documents, rather than attempting to provide comments on all aspects of the program. Clean Water Action will be a signatory to broader comments made by representatives of the Environmental Water Caucus. We also reserve the right to make additional comments at a later date.

Clean Water Action is an active participant in the Water Quality Technical Group, and is encouraged by the direction that this group has taken in recent months to increase the depth and reach of the program. However, we feel that this program is still in it's infancy, and that the Draft EIS/EIR suffers from this lack of development and integration with other components of the CALFED program. We are optimistic that the second draft will include a much expanded and more integrated vision of the water quality program.

Sincerely,

Marguerite Young
California Director

enc. Comments of Clean Water Action 6/19/98
Comments of Clean Water Action et al. 10/28/97 on the Draft Water Quality Component

cc: Lester Snow, CALFED
Rick Woodard, CALFED Water Quality Program
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Scientific and Regulatory uncertainty underscore the importance of phased decision making on Storage and Conveyance Alternatives, rather than phased implementation of a prematurely selected preferred alternative.

A comprehensive Water Quality Common Program is critical to the success of the CALFED solution. The current program as drafted continues to fall far short of articulating the comprehensive vision necessary to improve water quality in the delta and for beneficial uses of delta water throughout California. The recent process initiated by the Water Quality Technical Group to further refine program objectives and actions and the commitment to convene an expert review panel to address drinking water quality issues should result in a more robust, grounded, and science supported program.

We strongly agree with the statement that "current health effects research and treatment technology information from this effort (current $200 million study by EPA on drinking water) do not now provide an adequate basis from which to project the water quality parameters for drinking water standards, or the treatment options to meet those standards, are likely to be over the next 5-10 years." (Phase II Interim Report p 137) We support the expert review panel and their charge to help fully frame the proper policy approach. We however strongly disagree that it is necessary that "policy judgements must be made within the constraints of continuing scientific uncertainty" with regard to a commitment to selection of a preferred alternative. Rather, CALFED should be phasing decisions over the next 5-10 years rather than phasing implementation in order to allow the related common programs to perform, obtain necessary scientific information, perform economic analyses, develop necessary assurances (including answers to financing).

This is especially true in light of the fact that delta water quality meets current and proposed standards (expected in November 1998), and that at least one water system (Contra Costa Water District, CCWD) which relies exclusively on delta water is showing that currently available treatment technologies can be applied to larger water systems and prove a very effective way to protect drinking water quality for consumers. CCWD has total trihalomethane levels (~10ppm) that are well below even the most stringent standards (40ppm) expected for these byproducts in the next round of rulemaking by EPA. CCWD also performs quite well on limiting bromate formation in their treatment process. Their successful methods need to be modeled for other delta water users, both with regard to acheiving water quality parameters, but also modeled economically against CALFED conveyance and storage, assuming a user pays financing strategy.

In other areas of the water quality program there are huge gaps in information that need to be closed prior to a decision being made on a preferred alternative. The impacts of diverting or rechanneling substantial amounts of Sacramento River flows, barricades at Old River and the like could dramatically alter contaminant loadings in the Delta such as Selenium and pesticides. Dredging under the conveyance alternatives could unleash huge loads of metals like mercury and copper into the system with consequences for fish and human health alike.

Water Quality Issues and Concerns identified in Phase II Interim Report (w/ supporting detail from the Water Quality Technical Appendix.

Regulatory enforcement versus incentives: CALFED should not limit itself to cooperative programs when CALFED agencies have direct enforcement/regulatory control over water quality including non point source pollution. We feel strongly that CALFED needs to use a complete toolbox for getting the water quality gains envisioned. CALFED ought to commit to implementing existing laws and programs as a matter of course. Specifically in the next draft of the EIR/S:

The Water Quality Program should identify relevant legislative and administrative authorities, particularly with respect to enforcement. A section on legislative and administrative authority should be included for each action so that the public and decision makers know what implementation and enforcement authorities are available and what authorities CALFED is committed to. This discussion needs to inform the public and decision makers that the control of nonpoint source pollution is not only essential to the health of humans, the environment and the economy, but it also is mandatory under state and federal law. For example, the Porter-Cologne Water Quality Control Act, Calif. Water Code §§ 13000 et seq., gives the state the authority to regulate dischargers of nonpoint source pollution through the issuance of waste discharge requirements. In addition, the CZARA Section 6217 program also requires the state to implement and enforce measures to control polluted runoff.

As currently written, the Water Quality Program fails to identify the tools available to the government to enforce controls when voluntary programs prove ineffective. The Program should include a discussion of available legislative and administrative tools, and identify clear, specific and automatic triggers for moving from voluntary implementation or incentives to the use of enforcement tools. It should call for tracking of voluntary activities for a set period through mandatory reporting. If little or no progress in achieving voluntary compliance is achieved within that time period, or if reports on voluntary activities are not prepared, then the state should automatically move to regulatory encouragement and enforcement of the action items. This strategy would provide a measure of flexibility within the set parameters, but would ensure compliance and equity by setting time limits for achieving compliance. Even at a programmatic level, such a general strategy can and should be laid out.

The Water Quality Program Should Identify Responsible Agencies. The Water Quality Program should make an increased effort to identify which agencies will most likely be responsible for implementation of the action items. While this is a programmatic document, it certainly is possible to identify those agencies that have the mandates that most closely reflect the identified action item. This will give the agencies a chance to comment on those assumptions and give the public some reassurance that the measures actually will be implemented.

The Water Quality Program should contain a process for coordinating implementation of Action Items with implementation of existing, related programs. A related concern with the Water Quality Program is its failure to discuss in the appropriate amount of detail the need for the Program to coordinate with other, existing efforts. For example, the polluted runoff plans referenced above resulted in part from mandates under the Coastal Nonpoint Pollution Control Program, established by the Coastal Zone Reauthorization Amendments of 1990 ("CZARA"), Section 6217 (16 U.S.C. § 1455b), to control polluted runoff. The State Water Board and the Coastal Commission, which jointly administer this program, have decided to implement it statewide. Similarly, the State Water Board is mandated to control polluted runoff under Section 319 ("Nonpoint Source Management Programs") and Section 303(d) ("Total Maximum Daily Load" program) of the Clean Water Act. CALFED polluted runoff activities should be closely integrated with these related polluted runoff activities in order to maximize the effective use of limited funds. CALFED should insist that the State Board (and appropriate Regional Boards) make a high priority of establishing TMDL's parameters of concern in the Delta. The Water Quality Program should specifically spell out these links, as well as links between other aspects of the Program and existing regulatory programs, and describe the process that will be used to ensure that these programs are moving forward together. CALFED should also give serious consideration to implementing the water quality recommendations of the SF Estuary Project — the result of a stakeholder driven process. The expanded toolbox should also include new regulatory tools, strengthening legislation, financial and contractual arrangements and institutional approaches

Better integration of the water quality element with other parts of the program such as Ecosystem Restoration and water use efficiency is needed. While integration of the various common program elements is a critical step in implementation of the CALFED program, little progress has been made in quantifying water quality benefits (or adverse impacts) from other common programs. This gap and the need to close it is articulated throughout the DEIR/DEIS documents. In part this is due to the programmatic nature of the document, however much more of the gap seems to be due to lack of program development and an unrealistic time line for decision making. Absent a better understanding of how the ecosystem, water use efficiency, watershed management, levee programs, will perform with regard to maximizing in delta water quality (for export) how can a decision on conveyance be made? For instance one can't quantify potential reductions in total organic carbon-- a significant drinking water treatment concern without integrating the impacts of all of the above programs. The same can be said for the quality of agricultural drainage return flows and reductions in pathogen loads. Conversely, there is an inadequate discussion of the impacts of delta water quality associated with changing the relative balance of Sacramento and San Joaquin waters in the delta. Each of the conveyance alternatives as proposed could have dramatic consequences on loadings of selenium, pesticides and other parameters of concern. *The next draft should identify these interconnections more specifically and also outline the research that will be taken to analyze these, and what performance standards or targets must be met in each of the common programs in order to move forward.*

The program is not sufficiently aggressive or adequately developed to accomplish more than current water quality efforts. While many of the program actions are ambitious, the performance targets are set to current rules (for the most part) in existing programs. To the extent that some of these programs are ill enforced, CALFED must be willing to identify a strategy to get up to the baseline and then perform beyond it. Some of the suggestions made above under enforcement should help address this issue. In addition in the next draft the program should:

Emphasize the need to begin implementing pollution control actions, rather than waiting for additional research for some actions such as controlling runoff. Numerous studies show that water pollution, particularly polluted runoff, poses serious threats to human health and the health of the Bay-Delta environment and economy. Many of the "action" items listed in the Water Quality Program call for more research on the problem. While additional, site-specific research can be helpful, it must not preclude immediate action to begin to control polluted runoff. Extensive research already has been done into the types of polluted runoff and its transport and fate; CALFED and participating stakeholders should use this information to begin work to address this pollution, rather than put off taking action yet again. Sources of such information include EPA's *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (Jan. 1993) ("(g) Guidance"), the State Water Quality Control Board's 1995 Technical Advisory Committee reports on polluted runoff control, and the polluted runoff control plans produced Monterey Bay National Marine Sanctuary's Water Quality Protection Program. The research in these documents provides a sound jumping-off point for immediate action in the Bay-Delta area. The CALFED Water Quality Program should integrate this information and emphasize that further delay in implementing and enforcing measures to control this pollution could make the price tag for addressing the resulting problems far too high.

Specifically identify and more thoroughly discuss those areas where more research is needed before action can be taken. Diversion impacts, dredging, habitat restoration, aquatic toxicity of certain parameters, and human health effects of bioaccumulative toxins are just some of these areas.

Set priorities for evaluation and action. CALFED should employ some kind of systematic ranking scheme to assess the most important water quality issues. If this is the idea behind the Action strategies section, then the organization of the section and the individual strategies should indicate this.

The WQP needs assurances built in that tie water user benefits to improvements in water quality. The performance standards described need to go further. Why not adopt a performance standard that commits to attainment of water quality standards over a given number of river miles by a certain year? Water quality improvements associated with certain ecosystem restoration objectives or the water quality benefits derived from additional water for the environment gained from additional water conservation/reclamation.

Drinking Water Quality Targets and means to achieve drinking water quality objectives require further scientific investigation and analysis, as well as cost comparison, in order

to maximize public health protection without sacrificing health of the delta ecosystem. In addition to the scientific and regulatory uncertainties that were discussed earlier, many variable conditions face water systems that use water from the delta. Also discussed earlier, is the lack of quantifiable data available on source reduction efforts for TOC, pathogens, and ag drainage.

System to system differences in treatment approach, system size, quantity of delta water/other water sources, quality of other water sources used, adequacy of source protection efforts within the system (at reservoirs) are just some of the variables that impact treated water quality. These must be addressed and solutions modeled for impact as well as cost.

The WQP currently focuses its bromide modeling on levels found at Clifton Court when levels at San Luis due to bromide concentrated in ag return water may also be significant and have an adverse impact on water quality for many users. Other sources of bromide in the system and control strategies must be addressed in subsequent drafts.

Nutrient loading from ag drainage and other runoff into waters south of the delta have not been adequately addressed for their contribution to degraded water quality. Under some alternatives we may be spending billions to start with a "cleaner" source only to continue to degrade it on its way to the end user. It may be more cost effective to focus on water quality improvements that can be made to water as it moves through the rest of the system rather than putting all of the investment in moving the delta intake.

Water systems will be able to meet current and 1998 anticipated standards and *treatment technology is changing rapidly and becoming more affordable.* There is time to do more analysis.

Water systems will have to comply with any stricter standards set early in the next century ***years before*** *any of the conveyance or storage options identified could be built.* This means water systems will have to come up with system specific strategies to comply. If urban water districts have no need for the engineered projects when they come on line, they may be unwilling to pay a share of the costs, leaving the taxpayers with an enormous stranded asset.

All of the above factors demand more consideration to see if any one-size-fits-all-engineering solution to improve export water quality will really provide the most water quality protection for the price.

Dilution oriented actions to increase fresh water flows into the delta should be considered a valid way to manage seawater intrusion but only as a last resort to manage agriculture related salinity problems. Unlike contaminants, seawater intrusion into the delta has been increased due to human manipulation and depletions from the system. Restoring more historic flow patterns by increasing fresh water into the system will improve water quality. Use of dilution water to improve salinity levels in ag water should be employed only in emergencies and only after water use efficiency, treatment and other source reduction methods have been employed.

Specific Comments related to Proposed Actions

Mine Drainage

We strongly support the goal of reducing impairment through source control and/or treatment of mine drainage at inactive and abandoned mine sites.

The final draft should list all of the identified beneficial uses which are reflected in relevant Basin Plans, along with a listing of mercury, zinc, copper and cadmium impacted water bodies pursuant to CWA 303d."

We recommend that the testing program and evaluation of fish for their methyl mercury tissue content develop priorities that reflect the fishing and consumption habits of at-risk human populations.

Development of a system-wide research program to identify bioavailable forms of mercury, and an action plan to reduce loadings of these forms to the Delta Region and its tributaries.

Mercury contaminated sediment should be evaluated for its remediation potential at mine sites, in riverine systems, and in shallow marsh habitat-- dredging may uncover huge loadings of more bioavailable forms. Source control at abandoned mine sites should begin immediately, with pilot scale projects targeted at the CALFED region's largest sources of mercury contamination, including Panoche/Silver Creek, Cache Creek, Mt. Diablo and the Sierra Foothills.

Indicators of success should include reduced concentrations of methyl mercury in the tissues of aquatic organisms, reduced bioavailable loadings generally, and reductions in the level of mercury, cadmium, copper and zinc in underwater sediments and the water column.

Urban and Industrial Runoff:

Each of the action items in this category should call for the development, implementation and enforcement of municipal runoff/stormwater programs that include municipal runoff ordinances, revisions to local CEQA checklists, education programs and other measures to control urban and industrial runoff in a systematic and comprehensive fashion. The cities of Monterey and Santa Cruz have nearly completed a "Model Urban Runoff Program" that is intended to be a model for smaller municipalities (i.e., those not subject to NPDES stormwater permit requirements) throughout the state. This model program should be adapted for use in the communities affected by CALFED.

Specifically for pesticides, add a method in the next draft that encourages homeowners, cities, schools and other institutions to end their use of pesticides altogether in favor of non-chemical approaches to landscaping/ gardening. Consider setting an indicator of success related to reduction in the sale/ use of pesticides. The City of San Francisco has adopted a zero pesticide use ordinance for all city schools. This program has been very successful in it's early stages and should be adapted for use under the CALFED program.

Wastewater and Industrial Discharges:

Actions in this section would benefit from more focus on prevention and source reduction as the first and second leg of a strategy which ends in better treatment. Also actions should be prioritized to understand which actions are likely to produce the most improvements.

Agricultural Drainage and Runoff: As recently reported by the USGS (San Jose Mercury 5/2/98) of impaired basins, the San Joaquin is severely impaired by agricultural pollution both of surface and ground water resources. Actions to reduce the impacts in this area should take center stage in the WQP. Strict enforcement, additional incentives, and new programs should be called for to make agriculture the friendlier neighbor to the environment upon which it depends and to protect drinking water quality.

Bromide should be added to Action 2 (p.21 WQP Technical Appendix), as it is found at significant levels in ag return flows, and has been singled out as a parameter of concern.

The impacts of agricultural wastewater entering the California Aqueduct, via drain inlets in the San Luis Canal, is still not addressed (1995 DWR Water Quality Assessment of Floodwater Inflows in the San Luis Canal) as a drinking water quality issue. Surely these sources of salts, metals and organic compounds have a significant impact on water quality for Southern California users.

Land retirement improvements in the WQP should be quantified by benefits achieved in acreage reductions. Acreage targets should be listed clearly in the WQP.

Methods described should be listed by priority with actions focused on preventing /reducing pollution ahead of discharge treatment and source water improvements.

Nitrates should be considered specifically under the category nutrients.

Given that over 70 pesticides have been identified in tributaries and the bay at levels of concern and the use of the most toxic pesticides have risen dramatically over the past five years (see Rising Toxic Tide by Californians for Pesticide Reform July 1997 referenced in comments of Clean Water Action et al, October 24, 1997) the continued focus on just the 3 pesticides listed should be abandoned in favor of a more comprehensive approach. Further the continued insistence on an "incentive" based approach in this area is inappropriate. Methods and indicators of success should also include pesticide use reduction/ substitution with organic methods. Also see more detailed comments on pesticides expected to be submitted by Californians for Pesticide Reform.

Water Treatment

This topic is addressed in headline comments for this section. Performance measure for detection under Action 1(p25) should be taken at treatment plant not at intakes since this is a treatment not a source improvement measure.

Water Management:

Emphasis on water use efficiency and source control measures which improve salinity levels should precede those focused on diluting agricultural drainage water. Also see

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earlier comments regarding dilution.

Human Health
Actions should begin immediately to mitigate impairments associated with consumption of contaminated fish. These should include vigorous enforcement of existing laws as well as CALFED's endorsement and funding of additional programs to reduce contamination.

Toxicity of Unknown Origin An aggressive research program needs to be articulated in the next draft to address this issue. To date, this area has been a resting place for those actions and problems that haven't had time spent understanding them.